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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KARLIN BATTERSHALL, Defendant and Appellant.	E026233 (Super.Ct.No. HEF1680) O P I N I O N

APPEAL from the Superior Court of Riverside County. Vilia G. Sherman, Judge. Affirmed.

Karlin Battershall, in pro. per., for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Peter Quon, Jr., Supervising Deputy Attorney General, and Pat Zaharopoulos, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Karlin Battershall was charged with three counts of cruelty to animals. (Pen. Code, § 597, subd. (b).)[1] Count I involved cruelty to a horse named "Temperance Ribot" (Ribot);[2] count II involved eight other adult horses; and count III involved 35 sheep. A jury convicted defendant of counts I and II, and found her not guilty of count III. Defendant was granted five years' probation subject to, among other terms and conditions, serving 180 days in the custody of the Riverside County Sheriff, and ordered to pay restitution of $155,703. The court further ordered the forfeiture of defendant's animals. (§ 597, subd. (f)(1).) We affirm.

FACTS AND PROCEDURAL HISTORY

Defendant owned or had custody of 9 horses and 35 sheep, which she kept on her property in Riverside County. On July 14, 1998, Riverside County Animal Control Officer Monique McCleary responded to a complaint by a third party about "starving horses" on defendant's property and defendant's complaint that dogs were harassing and killing her sheep. McCleary returned to the property with another animal control officer, Randy Grissom, two days later. McCleary and Grissom saw that defendant's horses were emaciated or underweight, and had various physical problems, including diarrhea, tails

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] The charging information uses this name. At trial, defendant stated that the name of the horse is "Preference Ribot." In her appeal brief, defendant uses the shorthand term "Ribot," which we will use.

that were matted with feces, open sores, and a bacterial infection known as "rein scald." There was no food in the horses' stalls and their water was "moldy."

The following week, animal control removed the horses, sheep, and numerous items from defendant's property. The animals thereafter remained in the custody of animal control. During the following months, eight of the nine horses, including Ribot, improved in health. One horse died from an acute colon impaction while in animal control's custody.

A. *Prosecution Case*

In addition to the testimony of McCleary and Grissom concerning their observations of the animals' conditions in July 1998, two veterinarians testified for the People. Dr. Reginald Rasner examined eight of the horses on the day they were removed from defendant's property. He stated that Ribot was 250 to 300 pounds underweight and had a "rein scald" infection. Dr. Rasner described the other horses as having various conditions, such as being underweight and having diarrhea, hooves that were "long and broken," scars or wounds, fly infestation, and teeth that needed to be "floated."[3] The water containers were "filthy" with algae and dirt, and there were feces on the ground.

Dr. Allan Drusys testified that defendant called him to the property on July 14, 1998, to vaccinate and deworm her horses. Ribot had diarrhea, rein scald, and was

[3] "Floating" of teeth was described by Dr. Rasner as the filing of sharp edges of a horse's teeth which makes it difficult to chew food.

severely underweight. The horse was a "depressed, sad . . . pathetic specimen" that appeared to be "within hours of dying." Other horses were also underweight, but "not pathologically so." All of the horses, he said, were "suffering." Dr. Drusys opined that the "number one reason" for the horse's condition was the "lack of quality or quantity of feed." It took between three and six months of feeding under the care of animal control to get the horses back to where "they should have looked." Although defendant said that Ribot had acquired immune deficiency syndrome (AIDS), Dr. Drusys testified that horses do not get AIDS.

Dr. Richard Beck, a veterinarian, testified about an incident in 1996 in which he inspected defendant's horses on behalf of animal control. He saw two horses at that time which were "emaciated." He told defendant that the horses were underweight and provided her with a feeding plan. Grissom also testified as to the 1996 incident, stating that he told defendant the horses were underweight and that they needed to be fed according to Dr. Beck's plan. At a follow-up visit in October 1996, Grissom saw that the horses "were improving in weight, gaining weight."

Finally, the People submitted numerous photographs of the horses taken in July 1998 and photographs of the same horses taken after several months in the care of animal control.

B. *Defense Case*

A feed store owner testified that he had been selling feed to defendant for 15 to 18 years. Defendant bought the "best hay [he] had," as well as bran, salt, and minerals. She purchased about $800 worth of feed every two months. The last purchase for which evidence is in the record occurred on May 18, 1998, when she purchased 50 bales of hay and other feed.[4] Defendant testified that she usually bought hay every month.

Stephen Parker, a horse breeder, testified that he was at defendant's property in July 1998, that the horses he saw there were "outstandingly beautiful" and in good health, and that defendant "always had a lot of hay." Walter Honse, an animal control officer, testified that when they removed the horses and sheep from defendant's property, they did not remove a dog and chickens that were present there. One of defendant's neighbors testified that defendant's horses appeared happy and healthy and that defendant had a "whole barn full" of food.

Defendant testified that she owned the horses and fed them regularly. She followed Dr. Drusys's feeding recommendations. Her horses were not underweight, and had never been injured on her land, which is the "cleanest property around." She keeps a "whole closet full" of horse care and grooming supplies.

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[4] It appears that the feed store owner was about to discuss a receipt showing a purchase by the defendant on June 18, 1998 -- just one month before her animals were seized by animal control. The People objected on the ground that defendant had not previously disclosed the document. Although the court permitted defendant to introduce the document, she did not offer the document into evidence.

C. *Judgment and Postjudgment Procedural History*

On December 6, 1999, the jury found defendant guilty of violating section 597, subdivision (b), as to Ribot (count I) and as to the eight other horses (count II). The jury acquitted defendant of violating that subdivision as to her sheep (count III). Defendant filed her notice of appeal on December 7, 1999.

In January 2000, the court sentenced defendant to five years probation on certain terms and conditions, including serving 180 days in the custody of the Riverside County Sheriff, and the payment of restitution for the costs of impounding her animals. On March 24, 2000, the trial court set the amount of restitution at $155,703. Defendant did not file a new or amended notice of appeal from the sentencing or restitution orders.

On September 22, 2000, we dismissed the appeal due to defendant's failure to timely file a brief. The remittitur was issued on November 28, 2000. On May 22, 2002, the superior court destroyed the exhibits in this case.

In June 2003, defendant filed with this court a "Motion to Recall Remittitur and Reinstate Appeal After Involuntary Dismissal (Attorney's Failure to File Opening Brief) and Request for Consideration of Issues on Appeal From Post-Judgment Restitution Order . . . ." In this motion, defendant requested that we recall the remittitur, reinstate her appeal, and deem her appeal to include issues arising from the postjudgment restitution order. The People did not oppose this motion. We granted the motion, ordered the return

and cancellation of the remittitur, and ruled that the notice of appeal would be deemed to include issues arising from the postjudgment restitution order.

In October 2003, counsel for defendant filed a brief purportedly pursuant to *People v. Wende* (1979) 25 Cal.3d 436, consisting of a factual statement, but raising "no specific issues." On our own motion, we ordered that this brief be stricken because retained counsel may not file a "*Wende*" brief. (See *People v. Placencia* (1992) 9 Cal.App.4th 422, 428.) We granted defendant additional time to file an opening brief, dismiss the appeal, or file a substitution of attorney on appeal.

On November 10, 2003, we received a new opening brief from defendant. On November 21, 2003, we issued an order in which we stated: "The court has reviewed [defendant's] opening brief received November 10, 2003. The brief is signed by [defendant] in pro. per., but the cover also lists retained counsel Jeffrey Mintz. No substitution of attorney has been filed replacing retained counsel with [defendant] in pro. per. . . . The first nine pages of the brief come from the [defendant's] opening brief filed by retained counsel purportedly pursuant to *People v. Wende*[*, supra,*] 25 Cal.3d 436 but stricken by this court in the order of October 14, 2003 . . . . The remainder of the brief appears to have been written by [defendant] in pro. per., because it is a wholly inadequate amalgam of factual statements and implied arguments without required record references, separate headings or subheadings, explicit legal argument, or authority. (See Cal. Rules of Court, rule 14(a)(1)(B), (C).)" These latter portions of the brief, we stated, do not set

forth any reasonably arguable issues because they are merely asserted without any argument of or authority. We directed the clerk of this court to return the opening brief unfiled (except for one copy retained in our files). We further directed defendant's counsel "either (1) to serve and file an appellant's opening brief, on or before 30 days after the date of this order, arguing at least one issue on behalf of [defendant], or (2) to serve and file on or before the same date a request to dismiss the appeal, or (3) to serve and file on or before the same date a substitution of counsel signed by [defendant] or a motion to withdraw."

On December 23, 2003, counsel for defendant filed a motion for leave to withdraw as counsel on appeal. We granted the motion and gave notice to defendant that she may retain new counsel, apply for appointed counsel, or file her own opening brief.

On January 26, 2004, defendant filed the same brief that we directed be returned unfiled on November 21, 2003, except that attorney Jeffrey Mintz's name and address had been removed from the cover of the brief. The People filed a respondent's brief and defendant filed a reply brief.

ANALYSIS

Preliminarily, we note that defendant's opening brief is no less defective than the identical brief submitted in October 2003. Nevertheless, we have discerned five appealable issues from defendant's briefs and our review of the record. These are: (1) whether the evidence at trial was sufficient to sustain the conviction; (2) whether the

court committed reversible error in allowing evidence of prior conduct concerning defendant's treatment of animals; (3) whether the court erred in admitting evidence seized pursuant to a search warrant during a search in which other items were seized that were not within the scope of the search warrant; (4) whether restitution under section 597, subdivision (f), may include the costs of impoundment of her sheep even though she was acquitted of cruelty to her sheep; and (5) whether the amount of the restitution ordered was improper. We address these issues in turn.

A. *Sufficiency of the Evidence*

Defendant was convicted under section 597, subdivision (b). This statute states in part: "[W]hoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($20,000)." (§ 597, subd. (b).) A conviction under this subdivision requires the People to establish three elements: (1) the defendant owned or otherwise had the charge or custody of animals; (2) the defendant committed any of the acts or omissions specified in the subdivision with gross negligence; and (3) such acts or omissions caused danger to

the animal's life. (*People v. Speegle* (1997) 53 Cal.App.4th 1405, 1412-1413 (*Speegle*); but see *People v. Farley* (1973) 33 Cal.App.3d. Supp. 1, 10 [only ordinary negligence need be proved], disapproved of in *People v. Brian* (1980) 110 Cal.App.3d. Supp. 1, 3-4.)

"In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] '"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]"' [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

Defendant admitted she was the owner of the horses on her property. Other witnesses also testified that she owned the horses or property on which the horses were

seized. There was thus substantial evidence that defendant owned, or at a minimum had custody of, the horses.

There was also substantial evidence that defendant acted with gross negligence toward Ribot and the other horses, endangering them. For there to be gross negligence, the defendant's conduct "must be such a gross departure from the reasonably prudent that it amounts to reckless indifference with actual or imputed knowledge of the consequences." (*Speegle, supra,* 53 Cal.App.4th at pp. 1414-1415, fn. 7.) Here, defendant was an experienced horsewoman. She had owned horses since she "was a little girl," and knew when a horse looked healthy or sick. She owned the seized horses for a number of years before the incident in question. Defendant had been told in 1996 that her horses were underweight and needed to be better fed. Despite such knowledge, two years later the horses were described as "starving," "underweight," or "emaciated." Some of the horses had open sores and rein scald infections or fly infestation. Dr. Rasner explained how the lack of care for the horses' hooves and teeth was harmful to the animals. Some of the horses suffered from diarrhea or anemia, and had tails matted with feces. The horses' water dishes were moldy and there was no food in the horses' stalls. Dr. Drusys testified that the horses were "suffering" and that the primary reason for the horses' poor condition was the lack of quality or quantity of feed. After several months being in the care of animal control officers, the horses were "beautiful" and back to normal. Such evidence, especially in light of defendant's experience with horses,

supports a conclusion of reckless indifference on the part of defendant relative to the health of her animals. From such evidence, the jury could conclude that defendant was grossly negligent in failing to provide the horses with proper food, drink, or shelter, and that such negligence caused danger to the horses' lives.[5] There was thus substantial evidence to support the convictions on counts I and II.

Defendant refers to numerous instances of evidence introduced at trial in her favor and rhetorically questions the strength and credibility of the evidence against her. In determining whether substantial evidence exists to support a conviction, we must view the evidence at trial in a light most favorable to the judgment. (*People v. Hatch* (2000) 22 Cal.4th 260, 272.) "Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403.) We cannot, as defendant suggests we do, "reweigh the evidence, resolve conflicts in the evidence, draw inferences contrary to the verdict, or reevaluate the credibility of witnesses." (*People v. Little* (2004) 115 Cal.App.4th 766, 771.)

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[5] The People's evidence included several pictures of the horses taken in July 1998, around the time they were seized, and pictures taken months later after being in the care of animal control. These pictures, along with other evidence, were apparently destroyed by the superior court following the issuance of our remittitur. Even without these pictures, the testimony of the witnesses provides sufficient evidence to support the conviction.

B. *Admissibility of 1996 Incident*

Defendant contends the trial court erroneously admitted evidence of an investigation of defendant's treatment of her horses in 1996, two years before the seizure of the horses in this case. We review the admissibility of evidence of uncharged criminal conduct under the deferential abuse of discretion standard. (*People v. Stern* (2003) 111 Cal.App.4th 283, 298.)

Grissom testified that he went to defendant's property in August 1996 due to concerns that defendant's horses were underweight. He took pictures of some of the horses, which were admitted into evidence, and told defendant the animals were underweight and needed to be fed. Dr. Beck examined the horses at that time and recommended a feeding plan for the horses. Grissom further testified that the animals appeared to be getting better when he returned in October 1996.

Under Evidence Code section 1101, evidence that a person committed a crime, civil wrong, or other act is admissible "to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act." (Evid. Code, § 1101, subd. (b).) Here, Grissom's testimony was relevant to show that defendant had knowledge that her horses were not being sufficiently fed and of the need to feed her horses more food. The failure to adequately feed her horses after having been told to do so by animal control personnel and a veterinarian is relevant and admissible to show that such failure

constituted gross negligence. The court did not abuse its discretion in allowing the evidence.

C. *Search Warrant Issues*

Defendant contends that items were seized from her property that were not included within the scope of the search warrant.[6] Such items included bridles, ropes, halters, and feed. Prior to trial, she filed a motion to suppress the evidence seized from her property. As to items not within the scope of the search warrant, the People stated that these items were seized for the care of the animals that were seized. The court ruled that there was sufficient probable cause to support the search warrant, but that certain items that were seized were outside the scope of the matters designated in the search warrant. As to these items, the court ordered that they not be allowed into evidence against the defendant. The court denied defendant's request to order the return of the unlawfully seized items because the items were being used for the care of the animals. Following trial, the court ordered the return of "20 pipe corrals and halters" to defendant.

As to the suppression of evidence, the court ruled in favor of defendant by ordering the exclusion of items seized outside the scope of the search warrant. The

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[6] The search warrant for defendant's property permitted the seizure of "[a]ll horses, burros and sheep, and living creatures in a malnourished or neglected state, and veterinary receipts, feed bills, registration papers and breeding agreements[,] articles of personal property tending to establish the identity of persons in control of premises, vehicles, storage areas and containers being searched, including utility company receipts, rent receipts, addressed envelopes and keys . . . ."

seizure of such items does not preclude the use of evidence that was lawfully seized. (See *People v. Bradford* (1997) 15 Cal.4th 1229, 1301-1302.) It further appears from the record that the items that were ordered excluded were not offered or admitted into evidence during the trial. Defendant has no ground to appeal such issues. As to whether she has a right to the return of such items, such issues are beyond the scope of the present appeal.

D. *Restitution May be Ordered for Reimbursement of Costs for All Animals Seized*

The trial court ordered defendant to pay for the costs of impounding her sheep as well as her horses.[7] Defendant contends she should not have to pay the costs of impounding her sheep because she was acquitted on the charge of cruelty to the sheep. This issue was addressed in *Speegle*. In *Speegle*, animal control officers seized 200 dogs, 1 cat, and 3 horses from the defendant's property. (*Speegle, supra,* 53 Cal.App.4th at p. 1409.) The defendant was subsequently charged with 27 counts of felony animal cruelty under section 597, subdivision (b), and 228 counts of misdemeanor animal neglect under

[7] The impoundment costs were ordered pursuant to section 597, subdivision (f), which provides: "Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition." (§ 597, subd. (f)(1).)

section 597f, subdivision (a). (*Speegle, supra,* at pp. 1408-1409.) The jury convicted defendant of eight counts of felony animal cruelty and one count of misdemeanor animal neglect. (*Id*. at p. 1409.) The trial court ordered the defendant to reimburse the costs of impounding the animals in the amount of $265,000. (*Ibid*.)

On appeal, the defendant in *Speegle* argued that the amount of the reimbursement should be limited to the cost of impounding the eight animals on which her felony convictions were based. (*Speegle, supra,* 53 Cal.App.4th at p. 1417.) The Court of Appeal disagreed, stating: "In the panoply of statutes from section[s] 596 through 599f, the Legislature has manifested an unmistakable intent to prevent cruelty to animals [citation] and to provide for the removal of animals from the custody of those not fit to keep them. We thus interpret the present statute as allowing the removal of *all* animals in the keeping of a defendant found to be capable of cruelty, regardless of whether the other animals have been victims of a violation of the statute, as a rational means of ensuring the safety of the other animals." (*Speegle, supra,* at p. 1418.) We agree with the reasoning and holding of *Speegle* on this point. Accordingly, the restitution order properly included costs associated with the impounding of her sheep, as well as the horses.

E. *Challenge to the Amount of the Restitution*

At the hearing to determine the amount of reimbursement, the court received evidence showing a total of $155,703 in costs associated with the maintenance, impoundment, and care of the seized horses and sheep. The $155,703 amount was

reduced from a previously arrived at amount of $162,533.30. Patrick Flynn, defendant's counsel of record, stated: "[W]e would submit on the revised total of $155,703, and then as to the deduction of $3,000 for the 20 pipe corrals and halters, [defendant] has informed me that she does not want to sell those to the County at this time." The court then ordered restitution in the amount of $155,703.

Defendant contends on appeal that the restitution order must be reversed because Flynn did not represent her or have her authority to enter into the stipulation. At the hearing, Flynn, who represented defendant during trial, announced his appearance for defendant. Defendant stated Flynn was not her attorney and that she had retained other counsel, Sherie Owens, who was not in court. The court, which had previously continued sentencing hearings at defendant's request, noted that "[t]his has happened several times. [Defendant has] indicated on previous occasions that [she has] hired somebody else and they've never shown up." The court clerk then unsuccessfully attempted to call Ms. Owens by telephone. The following exchange then occurred:

"[THE COURT:] We've made every attempt, I think, at this point to accommodate Ms. Battershall. What I'm going to do, since this person has not shown up and is too busy to talk to us, is to continue with the hearing.

"What I will tell you, Ms. Battershall, is that once we have settled the amount of restitution that you owe, if your attorney wishes, the one you indicate that you have

retained, if she wishes to call and set another date for a hearing to further address this issue, she is at liberty to do so.

"THE DEFENDANT: All right.

"THE COURT: So I'm going to go ahead with the hearing and set the amount of restitution based on what I have before me now, but I'm not going to foreclose your opportunity to have another attorney come in, and if she can make a showing that this is an erroneous amount, you are entitled to another hearing.

"THE DEFENDANT: All right. Thank you."

The record does not reflect any attempt by the defendant or her counsel to show that the amount ordered was erroneous. Thus, even if Flynn was not authorized to represent defendant at the hearing, the court made clear that it would consider a subsequent challenge to its determination. No challenge was made. Nor has defendant shown any prejudice or referred us to any evidence that would support a contrary determination. We thus conclude that even if Flynn was not authorized to appear for defendant at the restitution hearing, defendant suffered no prejudice and any error was harmless.

Almost three years later, in January 2003, defendant did file: (1) a "Motion to Set Aside Guilty Plea/Verdict[,] Enter Not Guilty Plea/Dismiss Case"; and (2) a "Motion to

Terminate Probation."[8] With one possible exception, these motions do not challenge the amount of the restitution owed. The possible exception is a statement made in both motions that "all restitution fees[,] all fines[,] and all probation fees were paid in full with the [M]arch 6[,] 2001 auction of the [defendant's] horses[;] the [$]172,443.30 was more than paid in full." Implied in this statement are (1) the fact that an auction of the horses occurred, and (2) the legal argument that the proceeds of the auction must be applied to reduce the amount of the restitution obligation. Defendant, however, presented no evidence of the auction or the amount of proceeds received from the auction. Nor did she provide any authority for the proposition that any such proceeds should reduce the restitution amount. It appears, by a minute order in the record, that the trial court denied the motions. Based upon our review of the record, and in light of the absence of facts and legal authority to support defendant's claim, we find no error in the ruling.

F. *Other Issues*

To the extent other issues are raised by defendant, we consider such issues to have been abandoned in light of the lack of legal argument, citation to authority, or reference to the record. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1107, fn. 37; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, pp. 627-629.)

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[8] These motions were filed following the dismissal of defendant's appeal and issuance of the remittitur and before we recalled and cancelled the remittitur.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ Ramirez
P.J.

/s/ Richli
J.